



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201016089**

Release Date: 4/23/10

Date: 1/25/2010

UIL: 501.03-00, 501.03-05, 501.03-15, 501.03-30,
508.03-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 10/21/2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = a board member
B = a board member
C = a board member
D = a board member
M = a city
N = name of an organization
P = name of an organization
PP = name of an organization
W = name of an organization
X = a country
Y = name of an organization
x = a date

UIL Numbers:

501.03-00
501.03-05
501.03-15
501.03-30
508.03-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Primary Issue

Do you qualify for exemption under IRC 501(c)(3). No, for the reasons described below.

Subordinate Issues

- 1) Are private, rather than public, interests being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the IRC?

- 2) Does your inadequate exercise of discretion and control over foreign conduit-type payments constitute a supporting basis for denial of exemption under IRC 501(c)(3)?

Alternative Issue

In the event that you were found to qualify for tax exempt status under IRC 501(c)(3) on appeal, would you meet the definition of a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170? Yes, for the reasons described below.

Facts

You were formed by Declaration of Trust on the date x by A and B. Per the Trust document, the purpose of your organization is to operate exclusively for charitable, religious, scientific, literary or educational purposes, either directly or by contributions to organizations duly authorized to carry on charitable, religious, scientific literary or educational activities, with your principal activity being to support the activities and programs of the foreign organization Y, an institute dedicated to advanced Jewish studies, torah lecture and other religious activities.

Paragraph 2 of your Trust states that no part of the trust fund shall inure to the benefit of any private shareholder or individual, and no part of the activities of this trust shall consist of carrying on propaganda, or otherwise attempting, to influence legislation, or of participating in or intervening in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The trust document also indicates that the "Trustees shall apply the trust fund at such times, in such manner and in such amounts as they may determine, or as may be required by restricted donations, to the uses and purposes set forth in Paragraph 2."

Paragraph 5 of the trust document states, in part, that "any instrument required to be executed by this trust shall be valid if executed in the name of this trust by the majority of the Trustees. Provided, however, that transaction such as brokerage activity, withdrawals, deposits and checks drawn against balances held with respect to bank and brokerage accounts may be transacted on the signature, or telephone require (where such manner of doing business is otherwise customary), of any one of the Trustees, unless the majority of the Trustees specifically request a different arrangement."

You Trust states that "every successor or additional Trustee shall have the same powers ad duties conferred upon the Trustees named in this agreement." The Trust also states that the "Trustees may accept donations which restrict their uses and purposes, provided such restrictions are within the uses and purposes set forth in Paragraph 2."

Per your application for exemption, you are seeking classification a public charity under Section 501(c)(3) of the IRC as a 509(a)(1) and 170(b)(1)(A)(vi).

You submitted a brochure for the foreign organization N in the foreign city of M, in the foreign country of X. The brochure stated that B founded the foreign organization P, a Torah learning center and kollel. It further stated that today the kollel supports approximately twenty young

men whose full-day learning program prepares them to become Gemara teachers and rabbonim. The learning and planning is directed by B, founder of the foreign organization P.

You submitted an Affidavit and supporting material from the foreign organization Y. You indicated that you were submitting this information in order to show evidence that you were in compliance with Revenue Procedure 92-94. This Affidavit was signed by C as Trustee for the foreign organization Y.

The financial data that you provided with your initial application included budgets. These budgets included an explanation of the expenses that "all but a minor portion has been or will be distributed to the foreign organization Y."

We asked you to explain in detail how your organization will maintain control and responsibility over the use of any funds granted to foreign organizations. You responded that:

"as noted in the application the principal purpose of American Friends of the foreign organization is to support the religious and educational activities of the foreign organization Y located in the foreign country of X. That institution supplies this organization with regular updates of its religious and educational activities and this organization must be satisfied that its funds granted to the foreign organization Y are being expended in the manner that furthers its charitable purposes. In addition it receives reports from time to time from American friends who visit that institution and confirm to the Trustees that the funds that it receives from this organization are in fact being expended for the purposes intended. Finally, one of the Trustees lives in the foreign country of X and provides reports of the activities of that organization from time to time."

We asked you if another organization caused you to form. You responded that "another organization did not cause this organization to form." We also asked you if any of your board members serve on other boards. You responded that "the Trustees do not serve on other boards."

You indicated that grants are "disbursed via checks made payable to the foreign organization Y and are used for the charitable purposes for which they were intended as is confirmed by the resident Trustee in the foreign country of X and other friends who make regular field investigations."

You submitted copies of your bank statements from January – March. Those statements showed A and B listed as signatories on the account. The statements showed that only two checks were written during that time and they were written to the foreign organization Y. Copies of the fronts of the cancelled checks were included with the statements. On February 10, a check for \$ was written to the foreign organization Y by B. On February 25, another check was written to the foreign organization Y for \$ by B.

We asked you if the foreign organization N located in the foreign country of X is also known as the foreign organization Y. You responded that "the organization is also known as the foreign organization Y and B although not an officer of the organization is actively involved in that organization." You also said that "B who is a nominal Trustee of this organization is the founder

of the foreign organization N and is actively involved as a teacher and lecturer of the organization.”

You also submitted the Certificate of Registration issued by the foreign country of X of a Fellowship Society for the foreign organization PP in the foreign country of X. On this certificate it listed the address of the foreign organization PP. The certificate also included the name B as the recipient of the mail for the foreign organization PP.

We asked you about your control and discretion over contributions that you make to the foreign organization Y. You stated that “this organization does exercise complete control and discretion over activities of the foreign organization which it supports with respect to that support. As to the status of B, he is not an officer of the foreign organization but admittedly is a leading player. The fact does trouble you inasmuch as you feel that the requisite control may be lacking in the domestic organization, although he is only a nominal Trustee of the domestic organization. (He has signed the checks to the foreign organization but only my approval of such disbursement). This deficiency is now hereby corrected by the resignation of B.” You included a resignation letter from B. You further stated that “presently I am the sole Trustee but shortly I will choose another Trustee who has ***no involvement in the subject foreign organization***” (emphasis added). The resignation letter was dated October 5, 2006 and stated the following:

The undersigned Trustee hereby submits his resignation as Trustees of this foundation effective immediately. While I have not taken an active role in this foundation wherever my services were required I have served this foundation faithfully from its inception on February 11, 2005 and will provide a complete account of my activities as Trustee if requested by the Trustee who will continue to serve the foundation.

On December 15, 2006 you submitted an Acceptance of Appointment as Trustee from C. It was effective on November 17, 2006. On January 18, 2007 we made you aware that you had previously submitted an Affidavit that was signed by C as Trustee for the foreign organization Y in the foreign country of X. On February 2, 2007 you responded that:

“C has only a minor role in the W organization and makes only rare visits to it. However to avoid what appears to be control by the foreign organization he is resigning as the Trustee of this organization. His signed resignation will be submitted to you shortly. Instead a new Trustee is appointed. His name is D.”

We asked for you to explain what you meant by a “nominal” trustee. You responded that “the other Trustee was not actively involved in the administering the activities of this organization and only oversaw its activities from time to time and for that reason he was referred to as a nominal Trustee. That Trustee has in any event since resigned as Trustee, as reflected in the papers previously sent you.” You submitted a resignation from C dated February 12, 2007 that stated:

The undersigned Trustee hereby submits his resignation as Trustees of this foundation effective immediately. While I have not taken an active role in this foundation I was appointed successor Trustee in November 2006, whenever my services were required I have served this foundation faithfully from that time and will provide a complete account of

my activities as Trustee if requested by the Trustee who will continue to serve the foundation.

On March 16, 2007, you submitted a statement that A, Trustee, had appointed D as an additional Trust effective February 15, 2007. A statement signed by D was also submitted accepting his appointment and notarized by A.

We asked for you to provide detailed records and case histories of each grant that you had given to date. This information was to include the following:

- a. Number of organizations that had applied for the grant
- b. Number of organizations that were qualified to receive the grant
- c. Number of organizations that were selected to receive the grant
- d. Name of each grant recipient
- e. Address of each grant recipient
- f. Amount distributed to each grant recipient
- g. Purpose of each grant.

Rather than provide the requested information, you simply responded that:

"the only foreign charitable organization that has applied for a Grant has been the foreign organization Y, as noted, and it was duly qualified to receive the grants because of the nature of its educational and religious activities."

We also asked for you to provide a listing of the names of the officers and directors of the organizations that you support. You responded that "the officers and directors of the foreign organization Y have been previously disclosed to you via material sent to you." However, the only information we had was a brochure that stated that B is the founder and a document signed by C on behalf of the foreign organization Y.

We also asked how you publicize your grants. We asked for you to include a representative sample of advertisements, literature, brochures, etc. You responded that

"there is no need to publicize the grants by printed materials. The persons solicited by word of mouth or by personal visits to their home are fully apprised of the purposes of this organization and of the grants made to it."

We asked you about grant applications that you require and the procedures for an organization to submit an application. You responded that:

"no written application is required. An applicant would need to contact one of the Trustees and orally request a grant. This organization and its activities are pretty much known among persons in the Orthodox Jewish community."

On September 24, 2007 we asked if B had been removed from the bank account. You responded on January 22, 2008 that:

"until now B has retained signature authority. This is because the bank where the account is maintained has made it very difficult to remove him without closing the account and opening a new one. Moreover opening a new account has also proven difficult since the legal department of the bank does not like the trust under which this organization was created and in addition requires all of the Trustees to be personally present to open a new account, which would be very difficult to do."

We asked for you to describe the specific purposes for which you make grants to the foreign organization Y in the foreign country of X. You stated that "grants are made to the foreign country of Y to cover salaries and stipends necessary to be given to needy persons who undertake to study Torah matters in depth at the facility of the foreign organization Y on a daily basis." We also asked you how you determine the amount that you distribute to the foreign organization Y in the foreign country of X. You responded that "the amount to be distributed is normally limited to the resources of this organization which are far less than what the organization would need."

In July 2008 we requested copies of your bank statements from August 2006 – Present. You indicated that the statements from August 2006 – October 2006 cannot be located. You also indicated that the original account was now closed and a new account had been opened. You said that "A has signatory authority on the new account and that the other trustee, D, **will have** (emphasis added) signature authority."

In November 2008 you submitted copies of cancelled checks for the period December 2006 – July 2008. B was still writing checks on a regular basis as late as July 2008, which is almost two years after he resigned from the board.

You also indicated that your selection committee members meet "around twice a year" and that "there are no minutes kept." Your organization does not have bylaws. Your Trust document states that "all action of the Trustees shall be taken either by a resolution at a meeting or by written record without a meeting." There is no information in your Trust document regarding the operational procedures of your organization.

Furthermore, the cancelled checks showed that A wrote two checks in 2008 totaling \$3042. The checks were written to American Friends of the foreign organization by A. They were also endorsed and cashed by A. You further stated that A keeps the checkbook and is the individual responsible for the day to day control over financial transactions.

We asked for you to provide a list of all of the donors to your organization. Rather than send a complete listing, you provided what you called a "sample list of donors." Based on your bank statements many thousands of dollars have been deposited in your bank account. The sample listing was clearly not representative, as it included mostly smaller donations.

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized

as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions as defined in Section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code defines a charitable contribution to include a contribution or gift to or for the use of a corporation, trust, or community chest, fund or foundation which is (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(c)(2) of the Code further provides that a contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of paragraph 170(c)(2) only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph 170(c)(2)(B).

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the Regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

Section 1.6001-1(e) of the Regulations, Retention of Records, provides that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Rev. Proc. 2008-9, 2008-2 I.R.B. 1, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

Rev. Rul. 63-252, 1963-2 C.B. 101, holds that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or conduit of, a foreign charitable organization. In reaching this conclusion, the revenue ruling states that it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to

rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

Rev. Rul. 68-489, 1998-2 C.B. 210, held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes. Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). In an action for declaratory judgment pursuant to section 7428(a), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inure to the benefit of the family or that petitioner was not operated for the private benefit.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on

the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance in its operations, the court noted that the organization had failed to respond completely and candidly to IRS during administrative processing of its application for exemption. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (D.D.C. 1981), aff'd, 670 F.2d 1210 (D.C. Cir. 1982), the court upheld IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here Plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed :

“taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption.”

In Church in Boston v. Commissioner of Internal Revenue 71 T.C. 102 (1978) the court found that the organization's officers received amounts of money in the form of “grants.” These grants carried with them no legal obligation to repay any interest or principal. Petitioner contended, as it had during the administrative proceeding before the IRS, that the grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, petitioner was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the “reason” for the grant which was specified as either unemployment, moving expenses, school scholarship, or medical expense. This information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made

in furtherance of an exempt purpose. Accordingly it was found that the organization failed to establish that these disbursements constituted an activity in furtherance of an exempt purpose.

Application of Law

Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt function activities. To qualify for exempt status an organization must make a convincing case that they qualify for tax exempt status under Code section 501(c)(3). Section 501(c)(3) of the IRC provides for the exemption from federal income tax for organizations described in if they are organized and operated exclusively for religious, charitable, and educational purposes. An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006) the court explains that the burden is on the applicant to establish that it meets the statutory requirement under Section 501(c)(3) of the IRC. An organization is entitled to federal tax exemption only if, inter alia, it is organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Failure to satisfy any of these requirements results in an organization being disqualified from tax exemption.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. For purposes of section 501(c)(3) of the Code, the term "private interests" has a specific meaning. Private interests include: the creator of an organization or members of his family, shareholders of an organization, or persons controlled, directly or indirectly, by such private interests. One of the trustees, A, appears to have sole control over the organization. A has referred to other directors as "nominal" and has removed two of them at will to suit his needs. He has signatory authority on the checking account and writes and cashes checks. Most recently he has written checks and cashed them himself.

We discovered, through a brochure that you provided, that B is the founder of the foreign organization that you support. You admitted that he is involved as a teacher and lecturer of the foreign organization. You promptly removed him from the board upon our discovery of this fact. Clearly, his "removal" was only on paper. He continued to write checks from your bank account to the foreign organization that he formed for approximately two years after his resignation. As he resides in the foreign country of X, the checkbook was clearly kept in the foreign country of X, not the United States. The control and discretion of your funds were in the hands of someone who also controlled and founded the foreign organization.

You stated that you confirm that funds are used for the charitable purposes for which they were intended as is confirmed by the resident Trustee in the foreign country of X (at the time of this response the Trustee in the foreign country of X was B) and "other friends who make regular field investigations." It is not clear who the "friends" are that you refer to, but we know that B is the founder of the foreign organization as well as one of the founders of this organization. Allowing the founder of the foreign organization to confirm that your funds are used for their intended purposes is not sufficient control and discretion as described in Rev. Rul. 63-252.

We also asked for a complete listing of donors to your organization. To this request we got a small "sample." We also asked for a listing of the officers of the foreign organization that you support. You indicated that you had already provided this information to us when in fact you had not. Further, we asked for copies of specific bank statements. You submitted some of the statements that we asked for, but indicated that the statements for the period August 2006 – October 2006 cannot be located. Where you claim ignorance, are silent, or provide vague and general responses when specific detailed answers are required results in a mere theoretical proposition supporting exemption that is insufficient to clearly demonstrate that you meet the requirements for tax exempt status under Section 501(c)(3) of the IRC. Rev. Proc. 2008-9 provides that an organization seeking exemption must fully describe all of their activities including standards, criteria, and procedures.

To be exempt under Section 501(c)(3), an organization must be both organized and operated for one or more exempt purposes specified in the Section. Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, as indicated in Better Business Bureau, Easter House, supra. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more purposes specified in Section 501(c)(3). Neither is an organization operated exclusively for one or more exempt purposes if its net earnings inure to the benefit of private shareholders or individuals, or its activities further private rather than public interests.

As stated in New Dynamics, supra, exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. The applicant bears the burden of establishing that it qualifies for exempt status. An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests, as in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Again, exclusively does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose.

An applicant for exempt status must provide sufficient information for the IRS to make an informed decision as indicated in National Association of American Churches, supra. It must respond to questions completely and candidly. You did not respond openly and candidly to several of our questions. As in Basic Bible Church, supra, the responses must include details, figures, and documentation. You did not provide adequate details regarding the method of selecting the students that receive stipends, the manner in which the money was dispersed, or accurate amounts of cash that was given to the students. As in Bubbling Well Church, supra, you have given answers to our inquiries that were vague and uninformative.

In contrast to the broad generality of the purposes stated in your trust document, the name of your organization confirms a purpose to assist a named foreign organization. Two individuals formed your organization via a Trust document. One of the Trustees was B, who, as indicated above, is the founder of the foreign organization. When A removed B as Trustee, he was replaced with C. We pointed out to you that you had previously submitted an affidavit from the foreign organization signed by C as Trustee. In your following response you submitted the resignation of C and appointed yet another Trustee, D. You submitted a document that stated

that "the undersigned Trustee (A) hereby appoints D as an additional Trustee of this Trust." The acceptance of the appointment of the new Trustee was also notarized by A.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. You omitted several months worth of bank statements when we requested them. You have not provided the necessary financial information as required.

Rev. Rul. 63-252 provides examples to illustrate proper control and discretion regarding originations that donate to foreign organizations. In each example, the "foreign organization" is an organization chartered in a foreign country, and is organized so that it meets all of the requirements of section 170(c)(2) except that it is not a domestic organization as required by section 170(c)(2)(A). Rev. Rul. 63-252 demonstrates that the requirements of section 170(c)(2)(A) would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to a foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee. The real donee is the foreign recipient. Rev. Rul. 66-79, 1966-1 C.B. 48, amplifying Rev. Rul. 63-252, provides rules for determining whether a domestic charitable organization has and exercises sufficient control as to the use of contributions for the purposes of applying section 170(c). Contributions to a foreign charity generally are not deductible. While a domestic charity can use the contributions abroad, it cannot merely transfer them to a foreign charity. As you have allowed the founder of the foreign organization to write and cash checks on behalf of your organization, you are not exercising sufficient control and discretion.

As in Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), you have the burden of proving that you satisfy the requirements of the Code. You have failed to provide enough information to prove to us that you are operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC. You indicated that your selection committee members meet "around twice a year" and that "there are no minutes kept." You also do not have Bylaws. While Bylaws are certainly not a requirement, your Trust also does not provide adequate information regarding your operational procedures. In fact, there is no written documentation regarding how your organization is to operate. You stated that you have not kept meeting minutes in the past and that you do not intend to keep meeting minutes in the future. The operational test will be failed if you can not provide adequate evidence that you are operating in a manner acceptable under Section 501(c)(3) of the IRC. As you are unable to provide evidence that you meeting the operational test, you are not operating in a manner appropriate under Section 501(c)(3) of the IRC.

The responses that you provide to us must include details, figures, and documentation. Basic Bible Church, *supra*. The IRS has statutory and regulatory authority to inquire about an applicant's proposed activities and other subjects material to its determination of whether the applicant meets the standards for exempt status. Rev. Proc. 2008-9. Especially where an organization is dominated by one individual, or has a non-functioning board, which provide potential for abuse of exemption provisions, the applicant must openly and candidly disclose all facts bearing on the finances and operation of its organization. Basic United Ministry of Alma Karl Schuring, *supra*.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, *supra* the tax court held that it did not qualify for exemption under IRC 501(c)(3) because it was operated for the benefit of the founder and his family and it could not be shown that no part of its net earnings inured to the benefit of the founder and his family. The court found that the organization was, at all times, "completely dominated by the family-a father, mother and son." They were the only voting members, composed the board of directors and were in a position to control the operations and activities of the organization indefinitely. The family could, without challenge, dictate the organizations programs, operations, budget, and spend its funds.

Applicant's Position

You indicated that you are of the opinion that you meet the requirements set forth in the Code and should qualify as a Section 501(c)(3) organization, contributions to which should be deductible. Using Rev. Rul. 63-252, you indicated that you are not formed as a result of any action of the foreign organization nor was it meant to be a supporting leg of that organization. You further stated that you are more similar to the organization described in Rev. Rul. 66-79. You state that although your name indicates a purpose to support the foreign organization, this is not your sole purpose, in that it may contribute to other organizations in accordance with its broad purpose clause as set forth in your formation documents. You further stated that you only submit money to the foreign organization after you have reviewed its activities for which the money is to be advanced and is satisfied that it will further its purpose. The fact that the name of your organization is based on the name of the foreign organization is not dispositive. You cite the fact that Publication 78 lists hundreds of organizations that begin with "American Friends of." You further stated that the basis for your request for a determination letter is not because you are a domestic organization serving as a conduit to the foreign organization, but rather because you have clear stated charitable and religious purposes which you feels is furthered in large part by the named organization.

Service's Response to Applicant's Position

You state that just because you are named after a foreign organization, this shouldn't preclude you from qualifying for exemption. We concur. It's not the name of your organization, necessarily, that we take issue with; it's the manner in which your activities are conducted, as cited above. Further, you state that your basis for requesting a determination letter is the fact that you have "clearly stated charitable and religious purposes." These purposes are clear; to support a specifically named foreign organization. The manner in which you conduct these activities is the issue. Furthermore, the status of similarly named organizations does not establish a legal precedent and those organizations may keep adequate records and exercise the necessary discretion and control over foreign distributions that you do not.

Applicant's Protest to Proposed Denial of Exemption

You responded to our proposed denial with a statement from Trustee A. This statement was not signed under the required penalties of perjury statement. This statement cited no legal precedent. The protest letter stated that you "do not believe it is necessary to take issue with

your legal arguments since the application as has been pending presently is of an organization entirely different than the one originally organized in that the Trustees have no association with the foreign organization.”

You stated that initially one of the Trustees was in fact the founder, a teacher and lecturer of the foreign organization. You indicated that this deficiency in the organization was corrected through the formal resignation of that Trustee. You stated that since Trustee A was the sole Trustee, he was the only one that could appoint a new Trustee. You further stated that the appointment of the second Trustee, and the removal thereof, under the same rationale was done so that there would be two disinterested Trustees after the resignation of the others. You said that to suggest that Trustee A was taking actions “at will” is inaccurate. You further indicated that the statement that Trustee A “wrote checks and then cashed them to my recollection is absolutely false.”

You affirmed that Trustee B was the signatory on your checking account. According to you, he kept the check book and continued to have signatory authority after his resignation because of the bank’s “convoluted means to take him off” of the account.

You confirmed that you had not submitted three of the bank statements that we requested. However, you did not provide them with your protest.

Regarding our request for a complete list of donors, you stated that you only submitted a sample because there were a lot of small donors and you felt that a sample would suffice. You stated that you are willing to submit a larger list, but again, you did not include this documentation with your protest.

Service’s Response to Applicant’s Protest

In an attempt to clarify the issues that you presented in your protest, we sent a letter requesting additional information on June 4, 2009. We asked for the following information:

- 1) The protest to be signed under the penalties of perjury statement
- 2) any additional bank statements that you wanted to be considered
- 3) concurrence that contributions to your organization would not be deductible even if you qualified for exemption, and
- 4) board meeting minutes, or other relevant documentation, that demonstrates an objective basis for the board’s decision making.

We called Trustee A on July 13, 2009 to follow up on our request for clarification of your position. Trustee A indicated that he needed more time. Trustee A would not commit to a time frame in which he would respond. We called Trustee A again on September 21, 2009. At that time Trustee A indicated that he does not have time for this because he’s doing this “pro bono”. He said that he would not be responding to our request for clarification of your protest.

As your protest presented no new information or substantial clarification, and did not cite legal precedent, we must conclude that you still do not qualify for exemption as described below.

Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC as outlined below.

- 1) Private, rather than public, interests are being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the IRC. An organization is entitled to federal tax exemption only if, inter alia, it is organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. A has written checks and subsequently endorsed and cashed them. At the time of your last response, A was the only individual with current signatory authority on your checking account. A is also the individual that oversees the day-to-day financial transactions of the organization. He has removed two Trustees at will and replaced them. He has referred to the other Trustees as "nominal." Despite the fact that you claim to be a "public" organization, the private interests of A are being served.
- 2) You do not exercise adequate discretion and control over payments to the organization that you support that is located in the foreign country of X. You have allowed an individual located in the foreign country of X, who is no longer a member of your governing body, to control your checking account; therefore, you are not exercising adequate discretion and control regarding your disbursements. Your lack of control and discretion is a basis for denial under Section 501(c)(3) of the IRC.

Conclusion Regarding the Alternative Issue

If you were found to qualify for tax exempt status under IRC 501(c)(3), you would meet the definition of a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170. The individual located in the foreign country X that you have allowed to write checks is not a member of your governing body, but is the founder of the organization that you support in the foreign country X. Your decisions are not independent or solely within your jurisdiction with regard to the disposition of the funds donated to you, as you let an outsider to your organization control and dispense funds. The requirements of section 170(c)(2)(A) of the Code are nullified if contributions inevitably committed to go to a foreign organization, or components thereof, were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient. As the name of your organization implies, you were formed to support a foreign organization. You seek contributions in the United States. You momentarily hold the contributions, but the ultimate purpose is to support the foreign organization. The real recipient of the donations is the foreign organization. You are only nominally the donee. Because you do not review and approve the disbursements and because you do not maintain control and discretion over the use of the funds you receive, you are not

considered the recipient of the funds. Therefore, the requirements of section 170(c)(2)(A) of the Code are nullified and contributions to your organization are not deductible.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations, Group 7830
Room 4-504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations, Group 7830
550 Main Street, Room 4-504
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements